

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LIDUVINA SANTIAGO and JAIME SANTIAGO, Plaintiffs, v. THE KROGER CO., Defendant.	Civil Action File No. <u>Removed from:</u> State Court of Cobb County Civil Action No. 23-C-01973-S7
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**DEFENDANT THE KROGER CO.'S ANSWER AND DEFENSES TO
PLAINTIFFS' COMPLAINT FOR DAMAGES**

COMES NOW The Kroger Co. (hereinafter referred to as "Kroger"), named in Plaintiffs Liduvina Santiago and Jamie Santiago (the "Complaint") (hereinafter referred to as "Plaintiffs") by and through undersigned counsel, and files this, its *Answer and Defenses* thereto, further showing this honorable Court as follows:

FIRST DEFENSE

No act or omission by Kroger either proximately caused or contributed to whatever injury or damage Plaintiff claims to have sustained.

SECOND DEFENSE

Plaintiff, by the exercise of ordinary care, could have avoided the consequences of any act or failure to act of Kroger.

THIRD DEFENSE

Kroger shows that Plaintiff's alleged damages, if any, were directly and proximately caused by Plaintiff's own contributory and comparative negligence and failure to exercise ordinary care.

FOURTH DEFENSE

The negligence of Plaintiff equaled or exceeded that of Kroger.

FIFTH DEFENSE

Kroger shows that Plaintiff's alleged damages, if any, were the result of acts or omissions by persons or entities other than Kroger.

SIXTH DEFENSE

Plaintiff failed to specifically state her items of special damages, as required by O.C.G.A. § 9-11-9(g).

SEVENTH DEFENSE

Plaintiff's Complaint fails to state a claim for punitive damages.

EIGHTH DEFENSE

Plaintiff's claims for interest, attorney's fees and expenses of litigation are unwarranted and unsupported by any construction of the law to the facts of this case. As such, Plaintiff's claims pursuant should be dismissed.

NINTH DEFENSE

Kroger has not acted in bad faith, been stubbornly litigious or caused the Plaintiff unnecessary trouble and expense. Therefore, Plaintiff may not recover under O.C.G.A. § 13-6-11 from Kroger.

TENTH DEFENSE

As discovery has not yet begun, Kroger specifically reserves the right to raise any additional claims or affirmative defenses which may be discovered. Kroger hereby incorporates by reference all affirmative defenses set forth in O.C.G.A. § 9-11-8(c) to the extent applicable.

ELEVENTH DEFENSE

As an Eleventh Defense, Kroger answers the numbered allegations of Plaintiff's Complaint as follows:

1.

Defendant admits The Kroger Co. is an Ohio corporation authorized to do business in Georgia, and its registered agent for service of process in Georgia is correctly identified. Defendant denies all other allegations in this Paragraph of Plaintiff's *Complaint* which it has not expressly admitted.

2.

Defendant admits that Plaintiff was at the subject location on that date.

3.

Defendant denies the allegations contained in Paragraph 3 of Plaintiff's *Complaint*.

4.

Defendant denies the allegations contained in Paragraph 4 of Plaintiff's *Complaint*.

5.

Defendant denies the allegations contained in Paragraph 5 of Plaintiff's *Complaint*.

6.

Defendant denies the allegations contained in Paragraph 6 of Plaintiff's *Complaint*.

7.

Defendant denies the allegations contained in Paragraph 7 of Plaintiff's *Complaint*.

8.

Defendant denies the allegations contained in Paragraph 8 of Plaintiff's

Complaint.

9.

Defendant denies the allegations contained in Paragraph 9 of Plaintiff's *Complaint*.

10.

Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the averments set forth in Paragraph 10 of Plaintiff's *Complaint*, which therefore stand denied.

11.

Defendant denies the allegations contained in Paragraph 11 of Plaintiff's *Complaint*.

12.

Defendant denies the allegations contained in Paragraph 11 of Plaintiff's *Complain*.

13.

Defendant denies the allegations contained in Paragraph 13 of Plaintiff's *Complaint*.

14.

Defendant denies the allegations contained in Paragraph 13 of Plaintiff's

Complaint.

15.

Defendant denies the allegations contained in Paragraph 13 of Plaintiff's *Complaint*.

In response to Plaintiff's unnumbered WHEREFORE paragraph, Kroger denies the paragraph in its entirety, denies each and every allegation not specifically admitted hereinabove, denies that Defendant was negligent, and denies that Plaintiff is entitled to recover any amount from Defendant herein. Any averment contained in Plaintiff's Complaint which has not been expressly admitted by Defendant in this, its *Answer and Defenses*, is hereby denied and strict proof thereof is hereby demanded.

WHEREFORE, having fully responded to Plaintiff's Complaint by the filing of the within and foregoing *Answer and Defenses*, Defendant The Kroger Co. prays:

- (a) That judgment is rendered in favor of Defendant and against Plaintiffs;
- (b) That it be discharged with all costs cast against Plaintiffs;
- (c) That this matter be tried by a jury of twelve persons regarding any issues not subject to summary adjudication; and,
- (d) For such other and further relief as is just and proper.

Respectfully submitted this the 27th day of April, 2023.

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CERTIFICATE OF SERVICE AND COMPLIANCE WITH L.R. 5.1

This is to certify that I have this day served a copy of the foregoing *Defendant The Kroger Co.'s Answer And Defenses To Plaintiff's Complaint* with the clerk of Court using the CM/ECF system and served all parties of record via electronic service through the CM/ECF system to:

Alfonso Gonzalez, Esq.
Law Office of Alfonso Gonzalez, LLC.
1770 Indian Trail Road.
Suite 350
Norcross, Georgia 30045

Further, this is to certify that the foregoing pleading complies with the font and point selections approved by the Court in Local Rule 5.1. It is prepared in Times New Roman 14-point font.

Respectfully submitted this the 27th day of April, 2023.

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